British Columbia Council of Human Rights

1984-1985 ANNUAL REPORT

September 14, 1984 — March 31, 1985

Table of Contents

Letter of Submission	1
Chairman's Remarks	2
The Structure and Mandate of the British Columbia Council of Human Rights	2
Enforcement of the **Human Rights Act**	3
Special Programs	4
Council	4
Ongoing Activities Speaking engagements National and International Liaison Legal Aid	4
Case Summaries	5
Settled Cases	10

Appendices

Appendix A — Summary of Activity	11
Appendix B — Boards of Inquiry and Human Rights Decisions of the Courts	16
Appendix C — The **Human Rights Act**, S.B.C., 1984 c.22	19

ISSN 0830-0437

To: The Honourable Terry Segarty
Minister of Labour
Parliament Buildings
Victoria, B.C.

Sir:

On behalf of the British Columbia Council of Human Rights, I am pleased to submit to you the Annual Report of the Council for the period September 14, 1984 to March 31, 1985.

James R. Edgett
Chairman

Chairman's Remarks

A number of steps were taken during the inaugural term of the British Columbia Council of Human Rights to carry out the mandate prescribed in the **Human Rights Act.**

The British Columbia Council of Human Rights is committed to the principle of individual dignity and the fundamental right of equality of opportunity and treatment. While dignity and equality cannot be completely achieved by legislation, the Council promotes these principles through education as well as strong and impartial enforcement of the **Human Rights Act.**

The Council plans to proceed with a structured education program aimed at particular target groups such as employers and senior secondary students. The Council is firmly committed to human rights education as the most effective means of preventing discrimination and promoting the fundamental social values underlying human rights legislation.

None of the Council's achievements would have been possible if it were not for the hard work and dedication of the staff and Council members. Their commitment and the involvement of individuals and groups throughout the province will ensure human rights are safeguarded in the years ahead.

The Structure and Mandate of the British Columbia Council of Human Rights

The **Human Rights Act** was proclaimed on September 13, 1984. The legislation protects the fundamental rights of British Columbians by prohibiting discrimination on the basis of race, colour, ancestry, place of origin, political belief, religious belief, marital status, physical or mental disability, sex, age or criminal or summary conviction. The complete text of the **Human Rights Act** is found in Appendix C.

The five-member British Columbia Council of Human Rights is responsible for administering the **Human Rights Act.** This includes receiving, investigating and adjudicating complaints alleging discrimination contrary to the legislation. The Council is also authorized by the **Human Rights Act** to approve special programs to assist disadvantaged groups. All services provided by the Council are available to the public without charge.

Enforcement of the Human Rights Act

The **Human Rights Act** prohibits discrimination on a number of grounds, as noted above. Discrimination is prohibited in the areas of publications, public facilities, the purchase of property, tenancy, employment advertisements, wages, employment and unions and professional associations. The Council's jurisdiction extends to all matters within the constitutional authority of the provincial legislature. Complaints against federally regulated agencies such as airlines, railways and the federal government fall under the jurisdiction of Canadian human rights legislation.

Any person who believes someone has contravened a provision of the **Human Rights Act** is encouraged to contact the nearest office of the British Columbia Council of Human Rights or the Employment Standards Branch of the Ministry of Labour. All conversations are confidential, and no action is taken until a complaint is formally filed

When a complaint is filed, a number of steps are taken. The Council reviews the complaint to determine if it should proceed with an investigation. The Council may decide not to proceed with an investigation if the complaint:

— is not within the jurisdiction of the Council;
— could be more appropriately dealt with under another Act;
— is trivial, vexatious or made in bad faith; or
— is based on facts that occurred more than six months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice would result to any person affected by the delay.

An investigation of a complaint includes gathering information from all parties. Impartiality is assured at all stages of the process. Settlements are often achieved during this process.

Following the investigation, the Council must either:

— order the proceedings be discontinued;
— recommend a settlement of the complaint and where the recommendation is not accepted by the complainant or the person alleged to have contravened the **Human Rights Act**, submit a report to the Minister of Labour;
— submit a report to the Minister; or
— designate one member of the Council to hold a hearing.

When a hearing is to be held, notices are sent out with a summary of the investigation to the respondent and complainant.

Persons who are found to have contravened the **Human Rights Act** are liable for compensation for wages or salary lost or expenses incurred by the person discriminated against and, in addition, a payment not exceeding $2,000.00.

When the Council took jurisdiction in September 1984, there were 333 open case files. By the end of the first reporting period, after 6½ months, the Council had received 157 new complaints.

The backlog of 333 complaints was handled expeditiously by the Council. By year end, under Section 14 (1) (a) of the Act, 80 of these complaints were resolved and 112 were found to be unsubstantiated. In addition, 89 complaints were under investigation and 52 had been referred to hearings of which 20 were heard. The Council received 157 new complaints this reporting period as well as taking 2,456 inquiries and providing 1,308 referrals. Of the new complaints 87 were still under investigation, 30 were dismissed under Section 13 (1) (a-d) and under Section 14 (1) (a) 26 were resolved, 12 were unsubstantiated and 4 were referred to hearings.

About 80% of the complaints received by the Council were related to employment and 50% of all complaints concerned some aspect of sex discrimination. Complaints of sexual harassment constituted 26% of all complaints, an increase of 10 percent over last year.

Special Programs

Past practice of employers, landlords and others has limited the opportunities for members of disadvantaged groups. Correcting cases of this systemic discrimination necessarily involves giving special preference in training, education, job experience and other opportunities. Section 19 of the **Human Rights Act** gives the Council the authority to approve a program giving preference to members of disadvantaged groups. All individuals, companies or groups who wish to implement such a program must contact the Council for approval.

Council

The British Columbia Council of Human Rights consists of five members appointed by the Lieutenant Governor in Council: James Edgett, John Joe, Eric Powell, Natexa Verbrugge and Douglas Wilson.

On-going Activities

Speaking Engagements

One of the Council's first objectives was to inform the public about the new legislation, how it operates and how to file human rights complaints. Speaking engagements throughout the province gave Council members opportunities to achieve this objective. Some of the groups addressed by Council members were the B.C. Coalition of the Disabled, the Vancouver Island Human Rights Coalition, the Canadian Employment and Immigration Commission, the Vancouver City Health Department, the Public Legal Education Society, the Canadian Rights and Liberties Federation, Kwantlen College and the U.B.C. School of Library Science.

National and International Liaison

The British Columbia Council of Human Rights is a member agency of the Canadian Association of Statutory Human Rights Agencies (CASHRA) and the International Association of Official Human Rights Agencies (IAOHRA). In addition, the Council participates in the Federal/Provincial Territorial Committee of Officials Responsible for Human Rights through Council member Douglas Wilson who is the official representative for British Columbia. This latter committee is responsible for monitoring Canada's compliance with the various international conventions to which Canada is a signatory. Through this committee, new human rights issues are brought to the attention of official representatives and Ministers Responsible for Human Rights. The Council has also established a working relationship with the Secretary of State Human Rights Directorate.

Legal Aid

The Council has signed a contract to be effective April 1, 1985 with the Legal Services Society of B.C. to ensure that all persons involved in a human rights complaint are provided with legal counsel regardless of their ability to pay.

Case Summaries

By the end of the reporting period, the Council had held 24 hearings. Summaries of some decisions follow:

Sidhu v. Fraser Pulp Chips Ltd.

Prohibited Grounds: Race, Place of Origin and Religion (the **Human Rights Code** Section 8)

Member Designate: Douglas Wilson

Date of Decision: March 14, 1985

Allegation: Mr. Jagit Sidhu alleged he was refused re-employment by Fraser Pulp Chips Ltd. in Quesnel in February 1982 after recovering from a finger injury sustained the previous July.

Mr. Sidhu became a practicing Sikh in January 1980. Subsequently, he claimed co-workers made derogatory remarks toward him and another employee, also a Sikh. Mr. Sidhu alleged that the mill owner, Mr. Lyle Brown, and the foreman, Mr. Ed Shanahan, discriminated against him after he became a Sikh by reluctantly assigning him help when he moved heavy lumber and suggesting he go home if he couldn't do the job.

When Mr. Sidhu's doctor stated his finger had healed sufficiently to return to work, Mr. Sidhu was refused employment. It was also alleged that Mr. Brown called Mr. Sidhu "a baby Hindu" at this time.

Response: The respondent stated Mr. Sidhu was offered two or three opportunities to return to work during the seven and a half months he was collecting Workers' Compensation benefits. However, Mr. Sidhu declined these invitations as he was receiving treatment for his finger. Mr. Brown and Mr. Shanahan both testified they did not treat Mr. Sidhu differently than other workers because of his race or religion. After receiving complaints that co-workers were harassing Indo-Canadian workers, Mr. Brown threatened to fire anyone caught writing derogatory signs on the greenchain wall. Mr. Brown further stated that more than one-half of the employees at the mill where Indo-Canadian and the person who replaced Mr. Sidhu on the greenchain was a Mr. Gill, also a Sikh. He also testified that he called Mr. Sidhu "baby finger", in reference to his injured finger, not "baby Hindu". The reason Mr. Sidhu was not rehired, argued Mr. Brown, was due to a declining lumber market which forced Fraser Pulp Chips Ltd. to reduce its workforce by one-third.

Decision: Douglas Wilson found Mr. Sidhu did not establish proof of religious discrimination. The evidence suggested the foreman "pushed" workers to increase productivity, but he did not discriminate in doing so. The complaints of discrimination based on race and place or origin were also dismissed since Mr. Brown had a majority of workers who were of a similar race as Mr. Sidhu.

Mr. Sidhu failed to establish a **prima facie** case that there was a refusal to rehire as he was offered employment twice in 1981, and there was proof that no vacant positions had existed in February 1982 or since that time. As there could not have been a refusal, the complaint was dismissed as unjustified.

Johal and Grewal v. the Village of Lake Cowichan

Prohibited Ground: Race and Colour (the **Human Rights Code**, Section 8)
Member Designate: James R. Edgett
Date of Decision: December 13, 1984

Allegation: Mr. Joni Johal and Mr. Raj Grewal alleged they were discriminated against in employment and refused continued employment by the Village of Lake Cowichan because of their race and colour in March 1984. The two men were hired under a Canada Works Program to install a sewer. The project was to last 20 weeks, but the two were fired after one week.

The two complainants were the only Indo-Canadian members of the work crew. They testified the foreman, Mr. Reg Wall, made a racist comment about an Indo-Canadian during the first day of the job. Later that day Mr. Wall instructed the complainants to dig a deep hole and refused their request for shoring in the hole. At noon on Friday, Mr. Wall recommended to the project supervisor the two be terminated.

Witnesses for the complainants noted Mr. Johal and Mr. Grewal worked hard and testified that the foreman called the two complainants a derogatory name on several occasions.

Two employees that replaced the complainants were not Indo-Canadians.

Response: Ms. Patricia Ackerley, Clerk Treasurer and Senior Administrator of the Village of Lake Cowichan who supervised the project, testified she terminated the employment of Mr. Johal and Mr. Grewal on the basis of Mr. Wall's report which said they were not happy digging ditches and wanted to work on machines. Moreover, she reported they did not cooperate with supervisors and constantly argued with Mr. Wall when asked to do manual labour. Mr. Wall did not testify at the hearing.

Decision: James Edgett considered the admissibility of hearsay and circumstantial evidence at human rights inquiries particularly with respect to the subtle fashion in which racial discrimination can take place. He found Mr. Wall's explanation improbable and lacking in credibility. Mr. Wall, it was found, treated the complainants as members of a group distinguished by their race or place of origin and that discrimination was a major factor in their termination.

The Village of Lake Cowichan was ordered to cease the contravention and to pay Mr. Johal and Mr. Grewal $3,800.00 each for lost wages. No application was made for damages for injury to the complainants' feelings of self-respect.

Swanson v. Steveshirl Restaurant Ltd.

Prohibited Ground: Physical Disability (the **Human Rights Code**,Section 8)
Member Designate: James R. Edgett
Date of Decision: February 21, 1985

Allegation: Lela Swanson alleged she was terminated from her employment at Sam's Restaurant in Williams Lake on April 23, 1984 without reasonable cause because of her physical disability, a limp caused by polio at age 5.

Ms. Swanson began working as a waitress the morning of April 23, 1984. Later that day when she talked to Mr. Steven Chow, owner of the restaurant and president of Steveshirl Restaurant Ltd., about her schedule, he said her services were no longer required because of her limp. She subsequently wrote an article in the local newspaper about the incident.

Ms. Swanson testified she had 11 years experience as a waitress and, after termination from Sam's Restaurant, was hired by the Cook Shack. Her limp had never interfered

with her job and the incident left her quite upset and had adversely affected her husband and children.

Response: Mr. Chow testified he terminated Ms. Swanson because her limp made the job dangerous to both customers and herself. Moreover, he felt she could not move fast enough to handle rush periods. He added he planned to offer her a job as a dishwasher, but she wouldn't listen to him.

After the newspaper article appeared, Mr. Chow offered to rehire Ms. Swanson, but she refused having taken the position at the Cook Shack.

Decision: James Edgett noted Section 8 of the **Human Rights Code** covered complaints of physical disability, as in *Jefferson v. B.C. Ferries, 1976.*

He found no evidence to substantiate Mr. Chow's claim that Ms. Swanson posed a safety hazard and would be too slow to handle rush periods. Mr. Chow was ordered to refrain from similar contraventions and to pay Ms. Swanson $2,000.00 as compensation for the humiliation and mental anguish caused by his actions.

Yorke and Webb v. R.S. Roopra, Cyprus Pizza

Prohibited Ground: Sexual Harassment (the **Human Rights Code**,Section 8)
Member Designate: Douglas Wilson
Date of Decision: February 6, 1985

Allegation: Julie Webb alleged she was sexually harassed by her employer, Mr. Rajinder Singh (Roger) Roopra, an owner of Cyprus Pizza, during her employment as a waitress from January 31 to March 19, 1984. (Suzanne Yorke failed to appear at the hearing and her complaint was dismissed for lack of evidence).

Ms. Webb testified she felt humiliated and embarrassed by Mr. Roopra's sexually suggestive remarks, questions and innuendoes. For example, he allegedly asked Ms. Webb to accompany him to a motel and view a pornographic movie. She also alleged Mr. Roopra asked her personal questions about her sex life, such as whether she used birth control pils or had ever obtained an abortion. Mr. Roopra allegedly stood close to her on several occasions, touched and combed her hair against her will, boasted to customers he was having an affair with Ms. Webb and leered, ogled and made suggestive gestures toward her.

A number of Ms. Webb's allegations were corroborated by Mr. Roopra in cross-examination. Two witnesses for the complainant also agreed with Ms. Webb's allegations that Mr. Roopra's actions caused her mental stress and discomfort.

As a result of the alleged harassment, Ms. Webb left Cyprus Pizza. Since then she experienced frustration and difficulties in obtaining employment.

Response: Mr. Roopra testified that all his actions were motivated by good will. He denied having made suggestive or obscene gestures and denied any sexually suggestive actions.

The respondent was at a loss to explain why Ms. Webb had quit or why she did not want to come back to work as he thought she could become the "top waitress".

Decision: Douglas Wilson concluded that Mr. Roopra's actions and conduct constituted discrimination without reasonable cause (sexual harassment) contrary to Section 8 and that this coercive treatment was a condition of her employment. Mr. Roopra was ordered to cease further sexual harassment of his employees and to pay Ms. Webb $1,250.00 as compensation for the humiliation and injury suffered.

Langevin v. Engineered Air (A Division of Air Tex Industry Ltd.)

Prohibited Ground: Sexual Harassment (the **Human Rights Code**,Section 8)

Member Designate: Eric D. Powell

Date of Decision: December 10, 1984

Allegation: Gale Langevin alleged she was sexually harassed by her office manager, William Niblett, during her employment with Air Tex Industry Ltd. from December 15, 1983 to February 15, 1984 when she was fired.

Ms. Langevin testified that from the first day of her employment Mr. Niblett at various times had whispered obscenities in her ear, grinned and leered at her, grabbed her breasts, forcibly sat her on his knee, tried to kiss her and tried to rub his knees against her in a restaurant. She stated she was shocked by his conduct and rebuked him when these incidents took place.

Ms. Langevin stated that she felt she could not complain to other employees in the office. Moreover, she needed the job as her spouse was unemployed and had two dependents.

There were no eye witnesses to the alleged incidents, but two witnesses testified that Ms. Langevin told them she experienced sexual harassment at work.

Response: The respondent, Mr. Niblett, denied each allegation. Four affidavits were presented to support Mr. Niblett's position. In addition, three witnesses testified for Mr. Niblett.

Decision: Eric Powell considered arguments from legal counsel for both parties to determine the credibility of testimony by the parties and supporting witnesses.

The Council Member found that Ms. Langevin was young, inexperienced in office procedures, badly in need of a job and the subject of unsolicited sexual advances by Mr. Niblett. Mr. Niblett's behaviour created an intimidating, hostile and offensive environment which constituted sex discrimination contrary to Section 8. It was found, however, that Ms. Langevin's dismissal was not due to sexual harassment, but to her poor performance as a secretary and typist. Mr. Niblett was ordered to refrain from further sexual harassment and to pay Ms. Langevin $2,000.00 as compensation for the humiliation and injury to her self-respect.

Ross v. Vancouver Fire Department

Prohibited Ground: Age (Mandatory Retirement) (the **Human Rights Code**, Section 8)

Member Designate: Natexa Verbrugge

Date of Decision: January 10, 1985

Allegation: Mr. Robert Ross alleged he was terminated from the Vancouver Fire Department because of his age (60) in April 1983.

Mr. Ross, a member of the Vancouver Fire Department since 1949, was Chief Fire Prevention Officer responsible for fire protection, investigations and the enforcement of fire codes. He last fought fires in 1967.

Mr. Ross argued a departmental regulation allowed excluded (non-union) staff to apply for an extension beyond the retirement age, up to age 67.

Response: The respondent cited several reasons for denying Mr. Ross an exemption: (i) there were not exceptional circumstances to warrant it; (ii) extending his service would have a negative effect on other department members anticipating promotion; (iii) the maximum retirement age of 60 has been complied with for over 30 years, despite the departmental exemption provision and consistent enforcement is necessary to uphold the policy under human rights legislation and (iv) the maximum retirement age for policeman and fireman is 60 years under the **Pension (Municipal) Act.**

Decision: Section 8 (3) of the **Human Rights Code** exempts the operation of any term of a *bona fide* retirement, superannuation or pension plan from the prohibition against employment discrimination on the basis of age. Natexa Verbrugge found that the **Pension (Municipal) Act** is a *bona fide* pension plan within the meaning of Section 8 (3) of the Code. It was determined that Mr. Ross was a fireman under the **Pension (Municipal) Act** and Regulation 230 (the exemption provision) and that these impose compulsory retirement of fireman at age 60. On the basis of evidence given and the law discussed, the case was dismissed.

Waite v. Prescription Optical Co. Ltd.

Prohibited Ground: Equal Pay (the **Human Rights Code**, Section 6)

Member Designate: Natexa Verbrugge

Date of Decision: January 25, 1985

Allegation: Dialma Waite, an optical dispenser, alleged she received a lower rate of pay than male employees doing similar or substantially similar work for the respondent, Prescription Optical Co. Ltd.

Mrs. Waite was employed by the company from February 1974 to August 1981 when she left due to pregnancy. During her employment Mrs. Waite said her duties included, at various times, all aspects of dispensing as well as managing the store during the manager's days off, general office duties and measuring for cataract lenses. Mrs. Waite also noted her work history, training and increasing responsibilities at the White Rock store. She presented work orders and data from payroll records showing salaries and commissions to support her claim of receiving lower pay than males during similar work in other company stores. Mrs. Waite approached the company's general manager, Daniel Pavan, in 1979 to ask for a raise. She alleged he told her that, "she was making good money for a woman". However, he gave her a $25.00 a month raise, although this was not the usual raise time. In January 1981 Mrs. Waite and her husband advised Mr. Pavan that she was pregnant and alleged that Mr. Pavan told her she should be at home raising children.

Response: Mr. Pavan, Erik Aaboe, the store manager and Tom Bradbury, the President of Fort Realty Ltd., the respondent company's owner, all stated their assessments of Mrs. Waite's qualifications and work record as well as the company's procedures for establishing salary scales, bonuses and commissions. Detailed 1981 payroll information for 20 male and female employees in a range of positions was presented to show comparisons with Mrs. Waite's job which was classified as an "intermediate dispenser".

Mr. Pavan could not recall telling the complainant that "she was making good money for a woman", but said rather she was making good money for White Rock. He denied telling her she should be at home raising children.

Mr. Pavan also stated the difference between senior and junior dispensers depended on the type of store, experience, extra-curricular activities and production. He also stated that the complainant's professional certificates did not automatically make her a good optician.

Decision: Natexa Verbrugge examined the evidence presented and concluded that the complainant's salary was in line with other intermediate dispensers taking into account commissions, bonuses and raises. All junior dispensers received lower salaries and all the senior dispensers including some female senior dispensers earned more than the complainant. The Council member also accepted Mr. Pavan's explanation and denial concerning his alleged discriminatory remarks made to Mrs. Waite on the basis that his testimony was more consistent with the probabilities surrounding the circumstances of the case than was the testimony of Mrs. Waite.

The complaint was dismissed on the basis of all the evidence.

Settled Cases

During this reporting period a number of human rights complaints were settled and subsequently dismissed pursuant to Section 14 (1) (a) of the **Human Rights Act.** In one case an electrician complained he was harassed by his foreman because of his race and colour. The alleged harassment included suspensions for tardiness, complaints of poor job performance, insulting remarks from co-workers and other types of differential treatment. After receiving a payment of $5,000.00 from his employer, the complainant withdrew his complaint.

A store employee said he was fired after the store manager learned that he had been charged with theft under $200.00. The clerk filed a complaint alleging discrimination on the basis of an unrelated criminal charge. The complainant had worked part time for one and a half years prior to the incident. He was charged in March 1984, but the charges were dropped five months later. After receiving $1,000.00 from his employer, he withdrew his complaint.

In another case, a waitress complained she was sexually harassed by her employer. The daily harassment included verbal remarks and innuendoes. She alleged his attentions were resisted and other employees were aware of his conduct. As a result of the distress she resigned her position. She subsequently withdrew her complaint after the respondent signed an agreement to cease and desist all comments to his staff that might be construed as a violation of the **Human Rights Act.**

A secretary/typist for a lower Mainland firm complained that her two male employers verbally and physically sexually harassed her on several occasions. After an investigation, the two parties reached a settlement which included a $2,500.00 payment to the complainant.

APPENDIX A

Summary of Activity

September 14, 1984 - March 31, 1985

The following tables detail the nature of complaints received, the level of intake activity, the disposition of complaints before investigations under Section 13 of the *Human Rights Act* and dispositions of complaints following investigations. In addition, the number of complaints by region of the province is included.

Index of Tables

Table 1. Intake Activities — September 14, 1984 to March 31, 1985.

Table 2. Status of Complaints Filed — At March 31, 1985.

Table 3. Disposition Under Section 13 (1) — September 14, 1984 to March 31, 1985.

Table 4. Complaints by Prohibited Grounds — September 14, 1984 to March 31, 1985.

Table 5. Complaints by Area — September 14, 1984 to March 31, 1985.

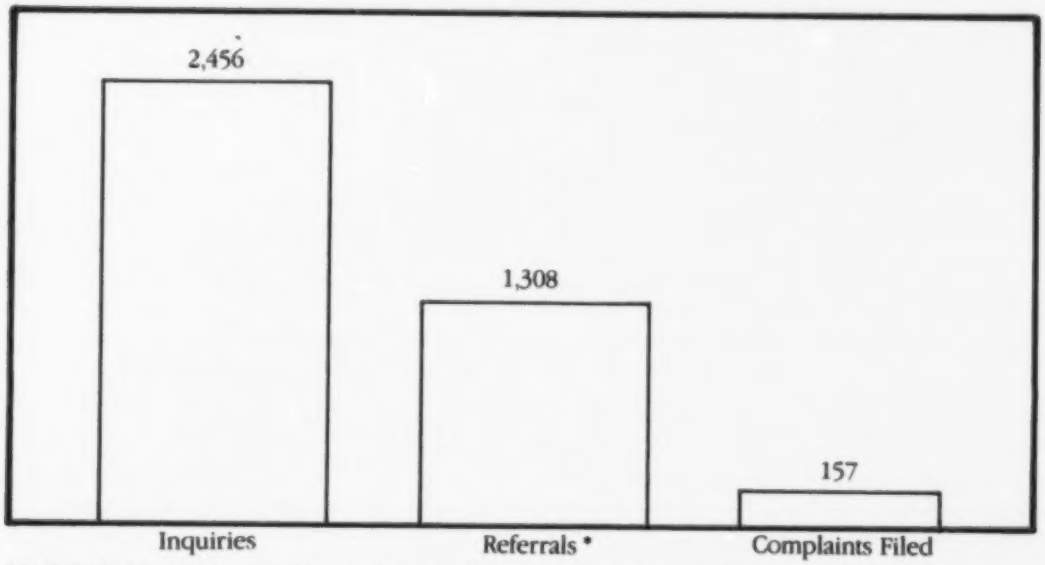
Table 6. Status of Backlog Complaints — At March 31, 1985.

Table 7. Number of Complaints by Regional District — September 14, 1984 to March 31, 1985.

Table 1

INTAKE ACTIVITIES

September 14, 1984 to March 31, 1985

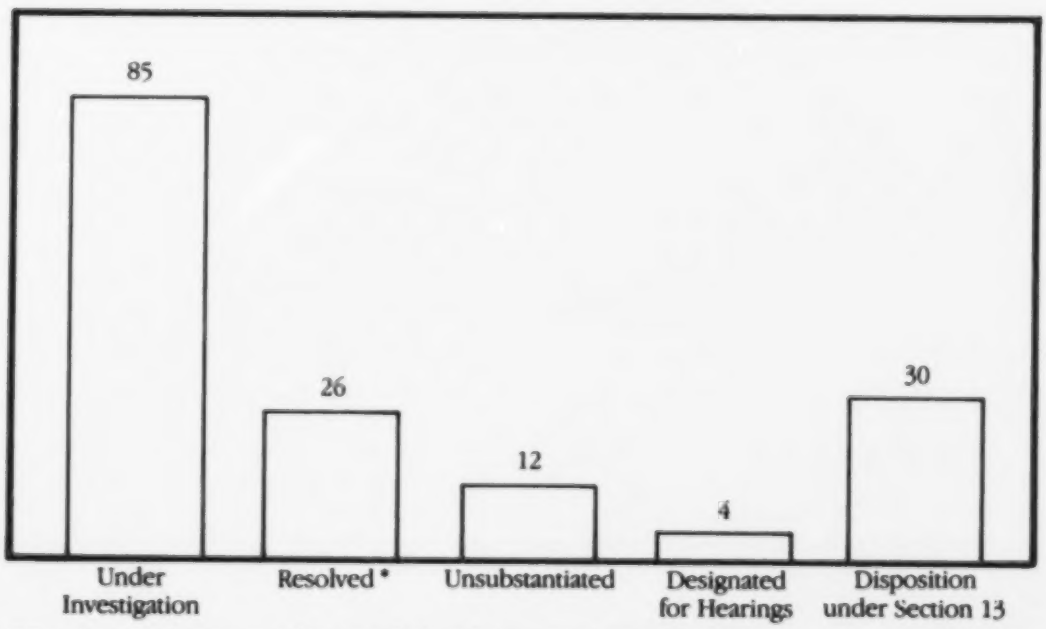


* Referrals are persons seeking assistance who are referred to another agency which can best assist them

Table 2

STATUS OF COMPLAINTS

At March 31, 1985

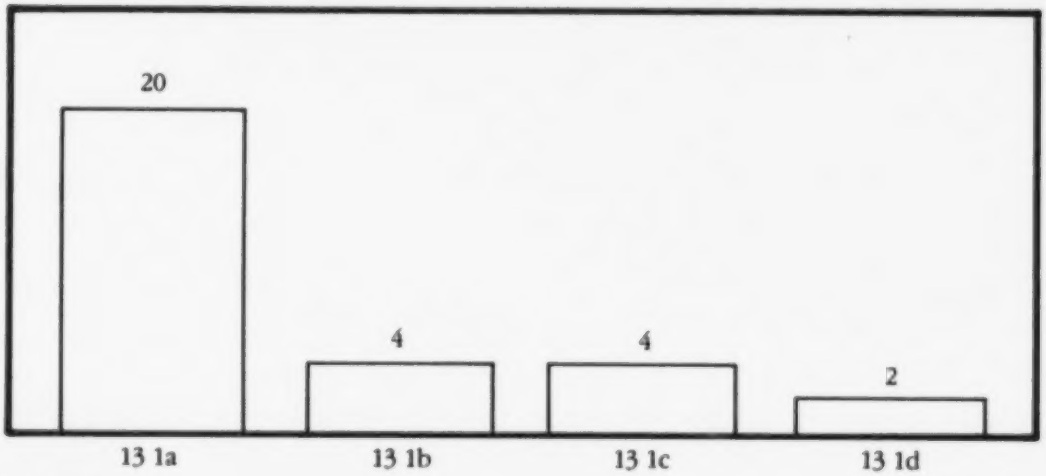


* Resolved includes complaints settled, withdrawn and not pursued.

TOTAL 157

Table 3

DISPOSITION UNDER SECTION 13 (1)
September 14, 1984 to March 31, 1985



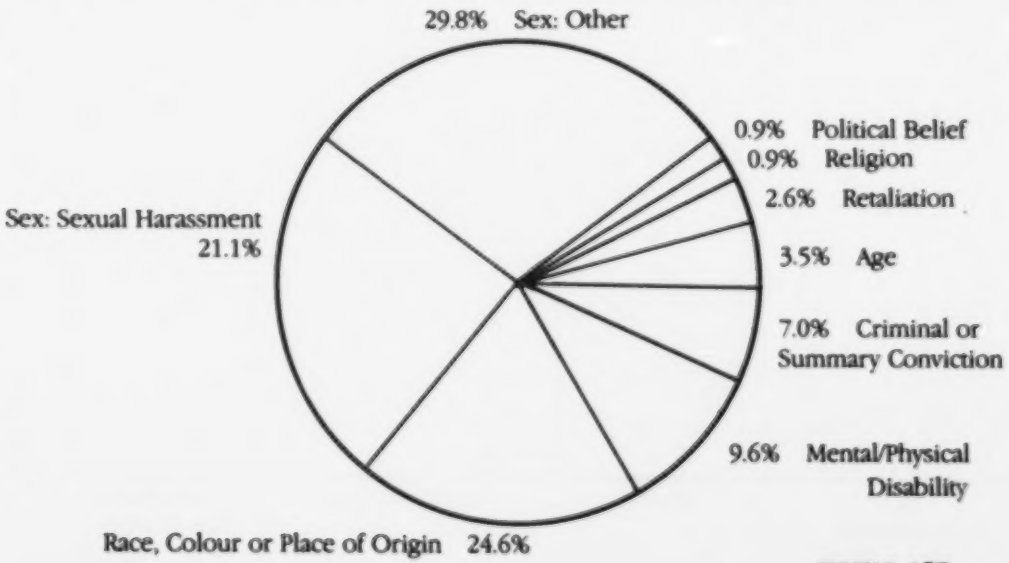
LEGEND:

TOTAL 30

13 1a Not within the jurisdiction of the Council
13 1b More appropriately dealt with under another Act
13 1c Is trivial, frivolous, vexatious or made in bad faith
13 1d Based on facts that occurred more than 6 months before complaint was filed

Table 4

COMPLAINTS BY PROHIBITED GROUNDS
September 14, 1984 to March 31, 1985



TOTAL 157

Table 5
COMPLAINTS BY AREA
September 14, 1984 to March 31, 1985

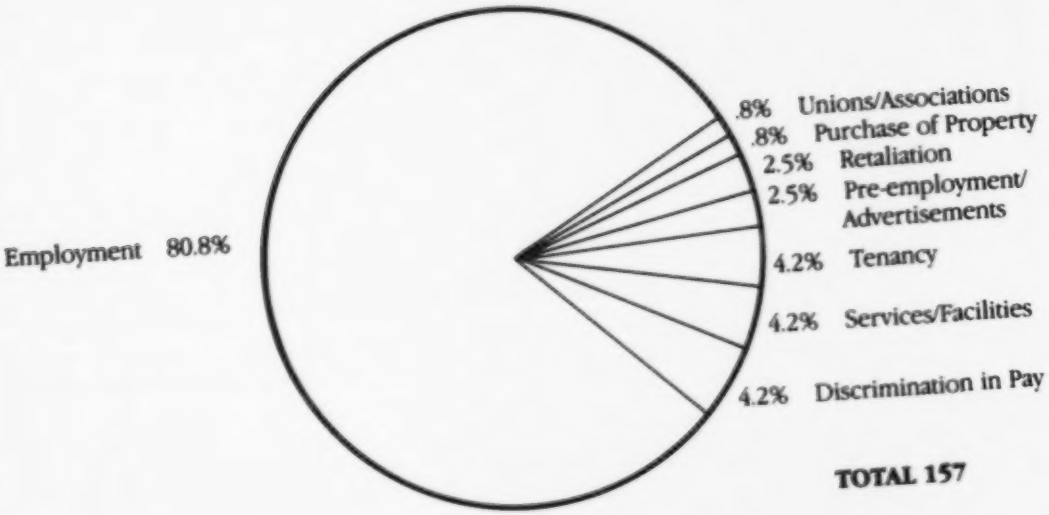
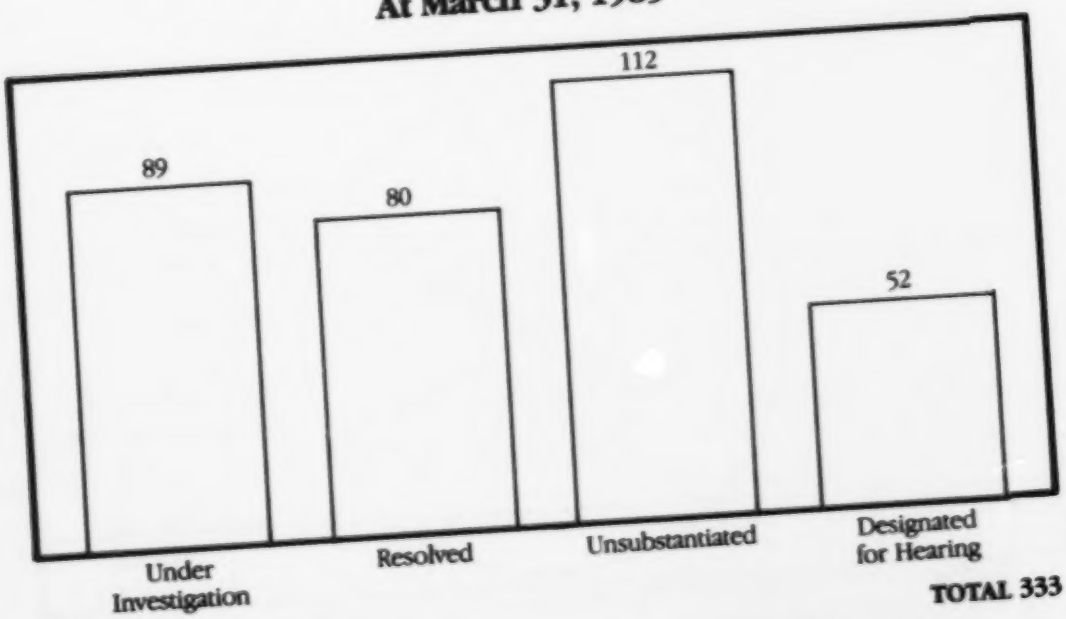


Table 6
STATUS OF BACKLOG COMPLAINTS *
At March 31, 1985



* Complaints existing prior to Council taking jurisdiction on September 14, 1984.

NUMBER OF COMPLAINTS BY REGIONAL DISTRICT
September 14, 1984 - March 31, 1985

REGION NUMBER	NAME OF REGION	NUMBER OF COMPLAINTS	PERCENT
02	Bulkley-Nechako	1	0.64
03	Victoria Area	20	12.74
04	Cariboo	2	1.27
06	Central Kootenay	1	0.64
07	Central Okanagan	5	3.18
08	Columbia-Shuswap	4	2.55
09	Comox-Strathcona	8	5.10
10	Cowichan Valley	3	1.91
12	East Kootenay	3	1.91
14	Fraser-Ft. George (Pr. George)	6	3.82
15	Greater Vancouver	88	56.05
16	Kitimat-Stikine	3	1.91
17	Kootenay Boundary (Trail)	1	0.64
18	Mount Waddington (Port McNeill Alert Bay, Port Hardy)	1	0.64
19	Nanaimo Area	4	2.55
20	North Okanagan	2	1.27
23	Peace River-Liard	3	1.91
29	Thompson-Nicola (Kamloops)	2	1.27
	TOTAL	**157**	

APPENDIX B

Boards of Inquiry

During this reporting period, three Boards of Inquiry, appointed prior to proclamation of the *Human Rights Act*, released decisions on complaints filed under the *Human Rights Code*. Summaries of these decisions follow:

James Chalmers v. Board of School Trustees of School District No. 72

Prohibited Ground: Reasonable Cause — Physical Disability (the **Human Rights Code**, Section 8)

Before: Barbara R. Bluman

Date of Decision: January 18, 1985

The Board of Inquiry found that School District No. 72 did not contravene Section 8 of the **Human Rights Code** when it did not hire James Chalmers as a school janitor.

The complainant, a left-arm amputee, was refused employment; after filing a complaint with the human rights branch he was given a two-week trial period to demonstrate his capabilities. His work was assessed by a school board official and another janitor. The complainant argued at the hearing that the School Board had reached the decision not to hire him on the basis of the first interview, prior to the trial period. The decision not to hire him, alleged Mr. Chalmers, was made on the basis of his disability, rather than his capabilities.

The Board found the test was not whether the respondent should have hired Mr. Chalmers, but whether it had reasonable cause for refusing to do so. The Board concluded there was such reasonable cause.

David Lewington, Brian Moran and Michael Leuszler v. The Vancouver Fire Department and the City of Vancouver

Prohibited Ground: Reasonable Cause — Minimum Height (the **Human Rights Code**, Section 8)

Before: Robin M. Elliot

Date of Decision: December 20, 1984

The Board of Inquiry found that the complainants were discriminated against without reasonable cause when they were refused employment as firefighters with the Vancouver Fire Department because they did not meet the department's minimum height requirement of five feet nine inches.

The question, the Board found, that had to be answered was whether the discrimination could be justified according to the standard of justification appropriate in such cases. The Board agreed the standard to be prescribed was the Supreme Court of Canada's decision in the *Borough of Etobicoke* case. Accordingly, the respondents argued that a minimum height requirement of five feet nine inches was reasonably necessary to ensure the efficient and economical performance of the

job without endangering the employer, other employees and the general public. The respondents submitted evidence that firefighters had to be a certain height in order to reach and remove ladders carried on the side of super pumper trucks and to ensure ease in controlling a ladder.

The Board found that some persons less than five feet nine inches could perform the ladder removal test. In addition, the Board relied on evidence that many North American cities either do not have a minimum height requirement or have a lower minimum height requirement for firefighters.

The Board retained jurisdiction to hear submissions on the matter of remedies.

Avtar Singh Toor v. Finlay Forest Industries, Ltd.

Prohibited Ground: Religion (the **Human Rights Code**, Section 8)

Before: Kenneth Glasner, Claire Alcott and William Giesbrecht

Date of Decision: December 5, 1984

The Board of Inquiry found that the respondents did not discriminate against Avtar Singh Toor because of his religion by requiring him to wear a hard hat in the work place.

The complainant, a baptized Sikh, alleged he was dismissed from his job with Finlay Forest Industries, Ltd. because he refused to wear a hard hat either on top of his turban or directly on his head. Both of these practices are prohibited in the Sikh religion. The respondent argued Workers' Compensation regulations require all persons to wear hard hats in the sawmill where Mr. Singh Toor was employed.

The Board found that this requirement is legitimate for safety reasons and since no accommodation was possible, the complaint was dismissed.

Human Rights Decisions of the Courts

British Columbia Supreme Court Decision

Ian Johnstone (carrying on business as Wessex Inn) v. Human Rights Code of British Columbia

Prohibited Ground: Sexual Harassment (the **Human Rights Code** Section 8)

Before: Dohm, J.

Date of Decision: February 1, 1985

The Court upheld an earlier Board of Inquiry decision which found that Ian Johnstone had sexually harassed Sheri Zarankin contrary to Section 8 of the **Human Rights Code.**

The Court found that sexual harassment constitutes discrimination within the meaning of Section 8 of the **Human Rights Code.**

Supreme Court of Canada Decision

Margaret Caldwell and Director, Human Rights Code of British Columbia v. St. Thomas Aquinas High School, Ian Charles Stuart and the Catholic Schools of Vancouver Archdiocese and the Attorney General of British Columbia

Prohibited Ground: Religion and Marital Status (the **Human Rights Code** Section 8)

Reasons for Judgement: Mr. Justice McIntyre

Date of Decision: December 20, 1984

In a unanimous decision, the Supreme Court of Canada ruled that Margaret Caldwell was not discriminated against because of her religion or marital status when her teaching contract at St. Thomas Aquinas High School was not renewed after she married a divorced man in a civil ceremony.

This case was an appeal of the decision of the British Columbia Court of Appeal. The Supreme Court of Canada found that the religious or doctrinal nature of Catholic schools require that teachers observe and comply with religious standards and, thus, be examples for students.

In addition, the **Human Rights Code** allows religious organizations to give preference to members of the identifiable group which their organization is designed to serve. The Court ruled that by not renewing Mrs. Caldwell's teaching contract, St. Thomas Aquinas School was justifiably exercising a preference for the benefit of the members of the Catholic community served by the school.

APPENDIX C

HUMAN RIGHTS ACT

CHAPTER 22

[Act administered by the Ministry of Labour]

Assented to May 16, 1984.

Contents

Section

1. Interpretation

PART 1

DISCRIMINATORY PRACTICES PROHIBITED

2. Discriminatory publication
3. Discrimination in public facilities
4. Discrimination in purchase of property
5. Discrimination in tenancy premises
6. Discrimination in employment advertisements
7. Discrimination in wages
8. Discrimination in employment
9. Discrimination by unions and associations

PART 2

COUNCIL OF HUMAN RIGHTS

10. Council established
11. Complaints
12. Inspection of records
13. Decision not to proceed with investigation
14. Procedure after investigation
15. Decision to be communicated in writing

PART 3

BOARD OF INQUIRY

16. Board of inquiry
17. Disposition of complaints

PART 4

GENERAL

18. Disclosure
19. Exemptions
20. Protection
21. Style of cause for proceedings
22. Technical and other matters
23. *Offence Act*
24. Regulations
25. Appropriation
26. [Spent]
27. Transitional
28. Commencement

Interpretation

1. In this Act

"age" means an age of 45 years or more and less than 65 years;

"council" means the British Columbia Council of Human Rights;

"employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

"employment" includes the relationship of master and servant, master and apprentice and principal and agent, if a substantial part of the agent's services relate to the affairs of one principal, and "employ" has a corresponding meaning;

"employment agency" includes a person who undertakes, with or without compensation, to procure employees for employers or to procure employment for persons;

"occupational association" means an organization, other than a trade union or employers' organization, in which membership is a prerequisite to carrying on a trade, occupation or profession;

"person" includes an employer, an employment agency, an employers' organization, an occupational association and a trade union;

"trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

PART 1

DISCRIMINATORY PRACTICES PROHIBITED

Discriminatory publication

2. (1) No person shall publish or display before the public, or cause to be published or displayed before the public, a notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against a person or class of persons in any manner prohibited by this Act.

(2) Notwithstanding subsection (1) but subject to the *Civil Rights Protection Act,* a person may, by speech or in writing, freely express his opinions on a subject.

Discrimination in public facilities

3. No person shall

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons unless the discrimination relates, in the case of sex, to the maintenance of public decency or, in the case of sex or physical or mental disability, to the determination of premiums or benefits under contracts of life or health insurance.

Discrimination in purchase of property

4. No person shall

(a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,

(b) deny to a person or class of persons with respect to a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons.

Discrimination in tenancy premises

5. (1) No person shall

(a) deny to a person or class of persons the right to occupy, as a tenant, space that is in any way represented as being available for occupancy by a tenant, or

(b) discriminate against a person or class of persons with respect to a term or condition of the tenancy of the space,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons, or of any other person or class of persons.

(2) Subsection (1) does not apply where a person in any way represents that space is available for occupancy by another person who is to share with him the use of any sleeping, bathroom or cooking facilities in the space.

Discrimination in employment advertisements

6. No person shall publish or cause to be published an advertisement in connection with employment or prospective employment that expresses a limitation, specification or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

Discrimination in wages

7. (1) No employer shall discriminate between his male or female employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.

(2) For the purposes of subsection (1), the concept of skill, effort and responsibility shall, subject to such factors in respect of pay rates as seniority systems, merit systems and systems that measure earnings by quantity or quality of production, be used to determine what is similar or substantially similar work.

(3) A difference in the rate of pay between employees of different sexes based on a factor other than sex does not constitute a failure to comply with this section where the factor on which the difference is based would reasonably justify the difference.

(4) No employer shall reduce the rate of pay of an employee in order to comply with this section.

(5) Where an employee is paid less than the rate of pay to which he is entitled under this section, he is entitled to recover from his employer, by action, the difference between the amount paid and the amount to which he is entitled, together with the costs, but

(a) no action shall be commenced later than 12 months from the termination of his services, and

(b) the action applies only to wages of an employee during the 12 month period immediately preceding the date of the termination of his services, or the date of the commencement of his action, whichever date occurs first.

Discrimination in employment

8. (1) No person or anyone acting on his behalf shall

(a) refuse to employ or refuse to continue to employ a person, or

(b) discriminate against a person with respect to employment or any term or condition of employment

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

(2) No employment agency shall refuse to refer a person for employment for any reason mentioned in subsection (1).

(3) Subsection (1) does not apply

(a) as it relates to age, to any bona fide scheme based on seniority, or

(b) as it relates to marital status, physical or mental disability, sex or age, to the operation of any bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan.

(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

Discrimination by unions and associations

9. No trade union, employers' organization or occupational association shall

(a) exclude any person from membership,

(b) expel or suspend any member, or

(c) discriminate against any person or member

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or member, or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

PART 2

COUNCIL OF HUMAN RIGHTS

Council established

10. (1) There shall be established a council known as the British Columbia Council of Human Rights consisting of not more than 5 members appointed by the Lieutenant Governor in Council to hold office during pleasure.

(2) The Lieutenant Governor in Council shall designate a member of the council as chairman.

(3) Each member of the council shall be paid the actual and reasonable expenses incurred by him in discharging his duties as a member of the council, and a member who is not an employee under the *Public Service Act* shall be paid remuneration for his services as a member of the council as the Lieutenant Governor in Council orders.

Complaints

11. (1) A person who alleges that he has been discriminated against contrary to this Act may file a complaint with particulars with the council.

(2) Where the council is satisfied that a person alleged to have been discriminated against contrary to this Act consents to the filing of a complaint and, in the opinion of the council, it is in the interests of that person that the complaint be filed, the council may accept a complaint filed on his behalf by another person.

(3) Where a complaint is filed under subsection (2), the person on whose behalf the complaint is filed shall, for the purposes of sections 12 to 16, be considered to be the complainant.

(4) Subject to section 13, the council shall investigate a complaint.

Inspection of records

12. For the purposes of conducting an investigation, the council may make an examination and inquiry that it considers necessary to ascertain whether this Act has been complied with and may

(a) require a complainant or a person who is alleged to have contravened this Act to disclose, orally or in writing, information the council requires respecting the subject matter of the complaint, and

(b) require the production of records relating to the subject matter of the complaint.

Decision not to proceed with investigation

13 (1) The council may decide not to proceed with the investigation of a complaint where it appears to the council that the complaint

(a) is not within the jurisdiction of the council,

(b) could be more appropriately dealt with under another Act,

(c) is trivial, frivolous, vexatious or made in bad faith, or

(d) is based on facts that occurred more than 6 months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

(2) The council shall not decline to proceed with an investigation by reason only that there was no intent by the person against whom the complaint was made to contravene this Act.

(3) Where the council decides not to proceed with an investigation, it shall so inform the complainant in writing.

Procedure after investigation

14 (1) On completion of an investigation, the council shall

(a) order that the proceedings be discontinued,

(b) recommend a settlement of the complaint and, where the recommendation is not accepted by the complainant or the person alleged to have contravened this Act, submit a report to the minister,

(c) submit a report to the minister, or

(d) designate one member of the council to receive, as specified by him, written or oral submissions from the complainant and the person alleged to have contravened this Act, and the member of council

(i) where he considers the complaint is not justified, shall dismiss the complaint, or

(ii) where he considers the complaint is justified, shall make an order described in section 17 (2) (a) and may make an order described in section 17 (2) (b).

(2) Section 16 (4) and (5) applies where oral submissions are made under subsection (1) (d) of this section.

(2.1) A member of the council who is designated under subsection (1) (d) has, for the purposes of that subsection,

(a) the privileges and protection of section 12 of the *Inquiry Act*, and

(b) where oral submissions are made under subsection (1) (d), the power of sections 15 and 16 of the *Inquiry Act* given to a commissioner appointed under Part 2 of that Act.

(3) On receipt of a report under subsection (1) (b) or (c), the minister shall

(a) refer the complaint to a board of inquiry, or

(b) order that the proceedings be discontinued.

Decision to be communicated in writing

15 An order under section 14 (1) (a) or (d) (ii) or section 14 (3) or the dismissal of a complaint under section 14 (1) (d) (ii) shall be communicated in writing to the complainant and the person who is alleged to have contravened this Act, and, where the proceedings are discontinued or the complaint is dismissed, no further proceedings under this Act shall be taken in relation to the subject matter of the discontinued proceedings or the dismissed complaint.

PART 3

BOARD OF INQUIRY

Board of inquiry

16. (1) A board of inquiry shall consist of one person appointed by the minister.

(2) A board of inquiry has, for the purposes of a reference under section 14 (3), the power, privileges and protection of sections 12, 15 and 16 of the *Inquiry Act* given to a commissioner appointed under Part 2 of that Act.

(3) The persons who are entitled to be parties to proceedings before a board of inquiry are

(a) the complainant,

(b) where the complaint was filed under section 11 (2), the person who filed the complaint on behalf of the complainant,

(c) the person who is alleged to have contravened this Act, and

(d) any other person whom the board of inquiry considers would be directly affected by an order made by it.

(4) A board of inquiry shall give the parties the opportunity to be represented by counsel, to present relevant evidence, to cross examine witnesses and to make submissions.

(5) A board of inquiry may receive and accept on oath, affidavit or otherwise, evidence or information that it, in its discretion, considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law.

(6) Where a party to a matter before a board on inquiry complains to the minister that the board has failed to proceed expeditiously, the minister may, after consulting the parties and the board, issue an order he considers necessary to ensure the matter will be disposed of without further undue delay.

Disposition of complaints

17. (1) Where a board of inquiry considers that a complaint is not justified, it shall dismiss the complaint.

(2) Where a board of inquiry considers that a complaint is justified, it

(a) shall order the person who contravened this Act to cease the contravention and to refrain from committing the same or a similar contravention, and

(b) may order the person who contravened this Act to

(i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the board, he was denied contrary to this Act, and

(ii) compensate the person discriminated against for all, or a part the board determines, of any wages or salary lost, or expenses incurred, by the contravention,

and, in addition to or instead of any other order under this paragraph, may order the person who contravened this act to pay to the person discriminated against an amount not exceeding $2,000.

(3) A board of inquiry may make an order as to costs it considers appropriate.

(4) Where an order is made under subsection (2) or (3) or section 14 (1) (d) (ii), the council or the person who was discriminated against and in whose favour the order is made may file a certified copy of the order with the Supreme Court or with a County Court, and on being filed the order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

PART 4

GENERAL

Disclosure

18. (1) A member of the council or any person employed in the administration of this Act shall not be required in any proceedings or otherwise, except before a board of inquiry or in a judicial review respecting a complaint under this Act,

(a) to give evidence, or

(b) to produce records

relating to information obtained or a communication received in the investigation of a complaint under this Act.

(2) The minister shall not be compelled to give evidence in any proceedings or otherwise respecting any matter, communication or information connected with the administration or operation of this Act, or otherwise coming to his knowledge under or by reason of this Act.

Exemptions

19. (1) Where a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interest and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group shall not be considered as contravening this Act because it is granting a preference to members of the identifiable group or class of persons.

(2) The council may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individual or groups, and any approved program or activity shall be deemed not to be in contravention of this Act.

Disposition of complaints

20. No person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

Style of cause for proceedings

21. (1) A proceeding under this act in respect of a trade union, employers' organization or occupational association may be taken in its name.

(2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his authority shall be deemed to be an act or thing done or omitted by that person.

Technical and other matters

22. (1) No proceeding under this Act is invalid by reason of any defect in form or any technical irregularity.

(2) Where there is a conflict between a provision of this Act and a provision of another enactment, this Act prevails.

Offence Act

23. Section 5 of the *Offence Act* does not apply in respect of this Act or the regulations.

Regulations

24. The Lieutenant Governor in Council may make regulations.

Appropriation

25. In addition to money appropriated under any other Act, money may be paid out of the consolidated revenue fund on or before March 31, 1985 for expenditures that may be required as a result of the enactment of this Act.

26. [Spent. 1984-22-26.]

Transitional

27. (1) Where, before this act came into force, an allegation was referred by the minister to a board of inquiry under section 16 of the *Human Rights Code*. R.S.B.C. 1979, c. 186, and the board of inquiry has not, on the day this Act came into force, disposed of the allegation, the board of inquiry shall continue to have the same power to inquire into, to make orders in respect of and to dispose of the allegation as it had before this Act came into force, and in relation to that allegation or an allegation referred to in subsection (2) of this section, sections 13, 17, 18, 21 and 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall, notwithstanding the repeal of that Act, remain in force.

(2) Where before this Act came into force an allegation was made orally or in writing to the director and there is no evidence that the allegation was received by the director under section 15 of the *Human Rights Code*. R.S.B.C. 1979, c. 186, within 6 months after the date of the alleged contravention, the board of inquiry to which the allegation was referred by the minister has, notwithstanding section 23 of that Act or any decision of a court to the contrary, the same power to inquire into, to make orders in respect of and to dispose of the allegation as it would have had before this Act came into force had the allegation been received 6 months after the date of the alleged contravention.

(3) Nothing in this Act affects an order made before this section came into force by a board of inquiry under section 17 of the *Human Rights Code*. R.S.B.C. 1979, c. 186, and notwithstanding the repeal of that Act, section 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall remain in force in relation to that order.

Commencement

28. This Act comes into force by regulation of the Lieutenant Governor in Council.